

BRIAN MacDONALD

v.

THOMAS J. FULLERTON et al.

Submitted on Briefs October 2, 2008

Decided October 21, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, SILVER,
MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Thomas J. Fullerton and Northeast Controls, Inc. appeal from a judgment of the Superior Court (York County, *Brennan, J.*) finding Fullerton liable to Brian MacDonald for four counts of breach of fiduciary duty and one count of unjust enrichment and awarding MacDonald declaratory relief and \$111,237 in damages. Contrary to Fullerton's contentions, the court did not err in finding that Fullerton and MacDonald had reached a full agreement to form two corporations, Northeast Control, Inc. (NEC) and Controlled Environmental Technologies, Inc. (CET), and that Fullerton breached his fiduciary duty to MacDonald as his co-venturer in the formation of those corporations by usurping a business opportunity in which NEC and CET specifically expected to engage. *See Northeast Harbor Golf Club, Inc. v. Harris*, 1999 ME 38, ¶ 11, 725 A.2d 1018, 1021-22. Additionally, the court did not prejudice Fullerton by making a comment after multiple days of trial about the parties' contentious relationship. *See In re William S.*, 2000 ME 34, ¶ 9, 745 A.2d 991, 995 (finding that statements made by trial court do not constitute bias or prejudice unless they demonstrate deep-seated favoritism or antagonism).

The court also did not abuse its discretion in denying Fullerton's motion for additional findings of fact. The findings provided by the court were sufficient to inform the parties of the reasoning for the court's decision and provide for

effective appellate review. *See Miele v. Miele*, 2003 ME 113, ¶ 11, 832 A.2d 760, 763-64. Because the court never approved Fullerton's motion to add laches as an affirmative defense and the issue was never litigated, we also disagree with Fullerton that the court abused its discretion by not making a specific finding on laches. Furthermore, the court did not abuse its discretion in denying Fullerton's motion to dismiss the complaint for failure to join NEC and CET as necessary parties. The court correctly found that MacDonald could bring the action in his individual capacity because he suffered a harm "separate and distinct" from harm suffered by any other stockholders. *See Moore v. Me. Indus. Servs. Inc.*, 645 A.2d 626, 629-30 (Me. 1994). Finally, the record in this case fully supports the court's award of damages. *See Williams v. Ubaldo*, 670 A.2d 913, 917 (Me. 1996) (stating that a damage award will be disturbed only if there is no rational basis to support it).

The entry is:

Judgment affirmed.

**Attorney for Thomas J. Fullerton &
Northeast Controls, Inc.:**

Timothy C. Dietz, Esq.
Nadeau Law, LLC
1293 Main Street, Suite D
Sanford, Maine 04073

Attorneys for Brian MacDonald:

Daniel J. Murphy, Esq.
Daniel J. Mitchell, Esq.
Bernstein Shur
100 Middle Street
PO Box 9729
Portland, Maine 04104-5029